HEALTH FINANCE COMMISSION

Legislative Services Agency
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MEETING MINUTES[1]

Meeting Date:	**September 8, 2005**
Meeting Time:	**10:00 A.M.**
Meeting Place:	**State House, 200 W. Washington St., Senate Chamber**
Meeting City:	**Indianapolis, Indiana**
Meeting Number:	**3**

Members Present: **Sen. Patricia Miller, Chairperson; Sen. Gary Dillon; Sen. Beverly Gard; Sen. Connie Lawson; Sen. Billie Breaux; Sen. Vi Simpson; Sen Connie Sipes; Sen. Timothy Skinner; Rep. Vaneta Becker, Vice-Chairperson; Rep. Robert Behning; Rep. Mary Kay Budak; Rep. Richard Dodge; Rep. David Frizzell; Rep. Don Lehe; Rep. Charlie Brown; Rep. Craig Fry; Rep. Carolene Mays.**

Members Absent: **Sen. Ryan Mishler; Sen. Marvin Riegsecker; Sen. Greg Server; Rep. Timothy Brown; Rep. David Orentlicher; Rep. Scott Reske.**

The third meeting of the Health Finance Commission was called to order at 10:10 A.M. by Chairperson Miller.

Family and Social Services Administration (FSSA) Secretary, Mitch Roob, reported on actions the agency was taking to control long term care beds in the state. First, FSSA is freezing the number of Medicaid-certified nursing facility beds. Second, they are asking for a temporary stay for licensure of new facilities. Secretary Roob reported that these actions are being taken to discourage new entrants to the institutional care market that may be attracted due to the implementation of the Quality Assessment Fee and to facilitate transition to a home- and community-based care model of long term care. He added that FSSA is looking at long term

[1] Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of $0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is http://www.ai.org/legislative/. No fee is charged for viewing, downloading, or printing minutes from the Internet.

care planning for the state. These actions will not apply to hospitals.

Senator Miller announced that a long term care facility building moratorium and nursing facility sprinkler requirements will be discussed at the next meeting. A draft of the nursing facility sprinkler requirement language was distributed to the Commission. (See Exhibit 1.)

Senator Miller announced that the next meeting of the Health Finance Commission will be held September 29, 2005, at 10:00 A.M. The final meeting of the Commission will be held on October 20, at 10:00 A.M.

Mary Ann Maroon announced that the Indiana Health Care Association is filling a semi-truck with nursing and food supplies for victims of Hurricane Katrina in Louisiana until next Friday. She asked for contributions and distributed a list of items needed and the drop-off location for donations. (See Exhibit 2.)

Infertility and Surrogacy Issues

Dr. John Jarrett distributed and reviewed materials dealing with minimum standards, reimbursements for egg donation, and various consent forms used for procedures performed by the Jarrett Infertility Group, including embryo preservation and donation. (See Exhibit 3.) These consent forms address fees, non-disclosure of anonymous donors, and legal parentage issues. Dr. Jarrett reported that no state requires adherence to the American Society for Reproductive Medicine (ASRM) and the Society for Assisted Reproductive Technology (SART) guidelines, but that some major insurance companies have started requiring compliance. Dr. Jarrett reported that oocyte-sharing procedures are not done by the Jarrett Fertility Group for ethical reasons. The Jarrett Fertility Group also does not destroy embryos.

Dr. James Donahue, a reproductive endocrinologist, introduced himself. (See Exhibit 4.) Dr. Donahue has recently completed a master's degree in Clinical Human Embryology from the University of Leeds in the United Kingdom (UK). He commented that, in his opinion, current Indiana statutes are ambiguous with regard to surrogacy issues and the donation of embryos (e.g., is this an adoption?). He said that there is a medical justification for surrogacy, and he reviewed circumstances when surrogacy might be considered an option. Dr. Donahue stated that patients desire assistive reproductive technology for various reasons and that good things come from this technology. Dr. Donahue briefly reviewed the UK licensing and regulatory requirements. The main difference is that the UK has a licensing body called the Human Fertilization and Embryology Authority (HFEA). The HFEA issues a license to a party referred to as the "Person Responsible" who is defined as the individual under whose supervision the authorized activities are to be carried out. The HFEA "Code of Practice, 6th Edition," which regulates any research or treatment which involves the creation, keeping, and use of human embryos outside the body, or storage or donation of human eggs and sperm in the UK, was supplied to the Commission staff and is available upon request. (See Exhibit 5.) Dr. Donahue emphasized that regulation should define the rights of the parents with regard to any potential child and protect the welfare of the child that may result from the use of the technology. He also reported that federal law mandates reporting to the Centers for Disease Control (CDC), which is available online. The data available is two to three years old and does not include sufficient information to determine the number of surrogacy cases. Dr. Donahue recommended that the General Assembly should consider re-evaluation of the Indiana surrogacy statute, develop clear guidelines, and include a mechanism to ensure compliance.

Mr. Steven Kirsh, J.D., is an attorney specializing in adoption cases. He commented that he does not do surrogacy work and is not working on the current case in the news. (See Exhibit 6.) Mr. Kirsh stated that there are not enough children available for adoption. Additionally, some individuals want a biological link to their children. In this regard, medical technology that can

provide the biological link has outpaced laws. (See Exhibit 6.) The children that result from the application of assistive reproductive technology services (ARTS) should be entitled to protection under the law. Current adoption laws require screening of potential parents and home visits. Counseling is also required for parents wishing to adopt and for biological parents terminating their parental rights. Mr. Kirsh commented that Indiana similarly needs laws governing ARTS that define the legal parents, who can participate in these procedures, and that also protect the best interests of the child. He said there are additional questions with regard to the custody of cryopreserved embryos and gametes.

Mr. Kirsh reported that Indiana statutes are clear that surrogacy contracts are not enforceable. He defined a surrogate mother as potentially having a biologic link to the child. Mr. Kirsh commented that surrogates have decided in the past not to relinquish custody of the child and that the same requirements of other ARTS procedures should apply to surrogacy. He then defined a gestational carrier, as an individual who has no biologic connection to the child that fills a need allowing a woman who cannot carry a baby to term to have a biological child. Mr. Kirsh stated that a comprehensive statutory scheme is essential. It should include mandatory contract provisions that must be included, mandatory home studies and counseling, and remedies for noncompliance and court supervision. He said that an Indiana statute could be based upon the Uniform Parentage Act or examples from other states that have enacted legislation. Mr. Kirsh concluded by saying that some states have no legislation, some have bans, but that without legislation, the courts will determine practice through the application of case law.

Senator Miller requested Mr. Kirsh to work with Dr. Eric Meslin and the Commission's staff attorney on a bill draft to be discussed at the next Commission meeting.

Ms. Kline, Staff Attorney, distributed a review of current Indiana statutes.(See Exhibit 7.)

Assignment of Benefits for Out-of-Network Providers

Ms. Ann Doran, representing the Indiana Association of Health Plans, outlined the assignment of benefits issue as follows. Health plans contract with providers for the provision of health care services to their plan beneficiaries. The providers agree to accept the health plan's prices, usually at a discount, and may then, through assignment of the patient's benefits, bill for services rendered and be paid directly by the health plan. The contracts prevent the provider from balance billing the patient beyond the copayments and deductibles that are determined to be due from the patient. Under Indiana law, any-willing-provider provisions allow any provider who agrees to accept the terms of the contract to participate in a health plan's network of providers. Providers who do not participate in a network do so by choice. Out-of-network providers may not be allowed to have assignment of the patient's benefit which means the patient must pay the provider and file the claim for services with the health plan themselves. The patient is usually further discouraged from using out-of-network providers through the imposition of a higher copayment for services received out of the plan's network. Mandatory assignment of benefits would require health plans to make payments to nonparticipating providers. A nonparticipating provider could submit the bill for the patient, receive partial payment directly from the insurer, and then balance bill the patient for any remaining amount due.

Ms. Doran stated that requiring mandatory assignment of benefits would cost patients money. The health plans' key concern with regard to mandatory assignment of benefits is the impact on cost. If a health plan is required to pay nonparticipating providers directly, incentives for patients to seek services that are discounted within the network are removed, as well as incentives for providers to participate in the networks. The provider contracts are a mechanism for the health plans to control the cost of services due to the discounts required to participate in the networks.

Further, they protect the patients from balance billing which is prohibited by the contracts. These savings translate to reduced cost of health insurance premiums. The cost of insurance premiums directly impacts the number of individuals and families that are uninsured.

Anthony Wolf, D.C., stated that his practice has been out of the Anthem network for a year. This insurance company is not honoring assignment of benefits. To his knowledge, Anthem/Blue Cross is the only insurer that is denying payment. This practice is a problem for patients who may not be aware that their providers are not in the network. As a result, he commented, patients don't get the services they are paying for. Dr. Wolf testified that providers are leaving the preferred provider networks because the insurers adjust payment without notice, deny payments for procedures that were previously reimbursed, and change the nature of the contract and give no notice. As a result of these practices, he believes that providers are forced out of the network.

Dr. Wolf commented that when a provider is out of the insurer's network, the burden of making claims is transferred to the patients who pay their provider first and then must accept whatever amount the insurer reimburses in addition to paying a larger portion of the claim for going out of network. He said that the claims process is highly technical and individuals do not have the expertise to determine if the claim was filed correctly with the insurer, if the amount of payment is correct, if denial of payment is correct, or how and when to file an appeal. (See Exhibit 8.) Dr. Wolf stated that the American Medical Association supports mandatory assignment of benefits. He added that Georgia has mandatory assignment of benefits and no harm has been observed there. He said that with mandatory assignment, insurers still can deny claims for good reason even with direct payment of the provider. Dr. Wolf asked the Commission to consider a mandatory assignment law for Indiana.

Michael Wallpe, Ph.D., testified that he is a consumer insured by Anthem and currently using a provider who is not in the network. Since the provider is out of the preferred provider network, he is required to pay more and must file his claims himself. His frustration is that he already pays for insurance, copayments, and deductibles, and now the provider cannot file claims for him. The claims process is highly technical and takes an expert to understand. He urged the Commission to consider requiring assignment of benefits.

Mr. Tom Roush introduced himself as a retired consumer, currently insured by Anthem. Mr. Roush stated that due to his long-time provider's nonparticipation in the Anthem network, he cannot choose to use a provider that he has seen for years. The paperwork required is complicated and unfair. Mr. Roush said that he does not support the concept of big government, but that government does have a place in requiring fair business transactions. An individual's only recourse when claims have been denied, is to hire an attorney; expensive for retired persons. Mr. Roush commented that individuals don't have leverage with insurance companies. The size of insurance companies, now very large due to corporate mergers, has limited the ability of consumers to shop for insurance. Consumers need some protection from these issues.

Senator Miller requested Carol Cutter of the Department of Insurance to respond to the issue regarding the Department's timely response to complaints at the next meeting.

Senator Miller asked if chiropractors are the only providers having problems with out-of-network provisions. Ed Popcheff, representing the Indiana Dental Association, reported that dentists occasionally report problems. The Indiana State Medical Association advised that they do not have a position on this issue pending their next meeting.

Impact of Carbonated Drinks on Children's Health

Dr. Ravi Shankar is a Pediatric Endocrinologist at Riley Hospital. His practice is concerned with diabetes in children. He stated that type 2 diabetes used to be rarely seen in children, but that more children are developing type 2 diabetes. Dr. Shankar said the incidence has increased so much that Riley Hospital has established a specific clinic for type 2 diabetics. This is a significant medical issue. Obese children are presenting with type 2 diabetes and other conditions not commonly seen before, such as elevated cholesterol. Dr. Shankar stated that minority children present as obese at younger ages than do Caucasian children and that studies indicate that obese children will be obese adults. Dr. Shankar addressed the issue of whether diet soft drinks are bad for children with respect to inappropriate weight gain. (See Exhibits 9 & 10.) Dr. Shankar reviewed studies related to the correlation of obesity or weight gain with the consumption of diet sodas. He concluded that evidence indicates that families whose children consume diet soft drinks make certain other food and lifestyle choices that influence their children's weight, such as fried fast foods, etc. Additionally, consumption of diet sodas displaces the consumption of milk in the diet. Dr. Shankar added that with regard to caffeine, there are no studies proving it is responsible for behavioral disorders. Dr. Shankar concluded by recommending that diet sodas not be available in schools.

Commission questions and discussion followed.

Dr. Linda DiMeglio, a pediatric endocrinologist at Riley Hospital, offered testimony relating to carbonated drinks, bone health, and calcium intake. (See Exhibit 11.) Dr. DiMeglio remarked that there is an increasing prevalence of adolescent bone fractures which may be due to decreased calcium consumption and lack of exercise. She explained that 90% of bone mass is developed in children and adolescents; this process needs to be optimized during this time since it cannot be corrected later. She reported that adolescent girls are not drinking milk to the same extent as they once were, and that vast numbers of children are not meeting the minimum intake of calcium necessary for good bone health. It is believed that girls cut back on milk to keep from gaining weight. Dr. DiMeglia stated that the problem is that diet soft drinks have replaced milk consumption. She stated that decreasing the availability of soft drinks will result in increased milk consumption.

Domenick Zero, D.D.S, Director of the Oral Health Research Institute at I.U., identified two dental problems related to soft drink consumption. Dental erosion occurs in a clean mouth and is the result of acidic action on the enamel. Dental decay is the result of the action of bacteria and sugar in the mouth. Both of these processes result in demineralization. Dr. Zero stated that most soft drinks contain phosphoric acid and citric acid, which are detrimental to teeth. He added that excessive consumption of fruit juices may also be detrimental to teeth. Dr. Zero stated that the greater the availability of these products, the greater the consumption will be. He asked what message we were sending to children by allowing vending machines selling soft drinks in schools?

Judy Chin, D.D.S., a pediatric dentist, distributed photos of tooth decay attributed to soft drink consumption and the American Academy of Pediatric Dentistry's policy on vending machines in schools. (See Exhibits 12 & 13.) Dr. Chin stated that children spend the majority of the day at school and should be exposed to healthy choices. She opposes any arrangements that would include decreased nutritional food options. Dr Chin added that Medicaid-covered children cost the state additional dollars due to these children presenting to their dentists with significant decay. She stated that soft drinks, sport drinks, and fruit juices all contribute to this problem. Dr. Chin commented that access to these products should be limited. Water and milk consumption should be encouraged.

Commission questions and discussion followed.

Jennifer Cleveland, R.D., representing pediatric dieticians at Riley Hospital, stated that they

support legislation that would ensure a healthy nutritional environment in schools, including the ban of sodas. (See Exhibit 14.)

Judy Monroe, M.D., Commissioner of the Department of Health (see Exhibit 15), summarized that the greatest adverse impact of carbonated drinks on the health of children and adults is the displacement of milk in their diets and that consumption of carbonated beverages contributes to tooth erosion. With regard to obesity, the eating selections and life style practices associated with the consumption of diet soft drinks may be part of the correlation between the use of these products and weight gain. She also addressed the fact that the human body may not recognize liquid calories contained in sugared soft drinks when determining satiety. Dr. Monroe added that the artificial sweeteners in diet soft drinks are generally considered safe in recommended quantities but that they may stimulate appetite, while caffeine in excess of 100 mg per day can adversely affect sleep patterns, can contribute to hypertension, and can cause headaches. Dr. Monroe stated that the association of soft drink consumption with television viewing and the associated lack of activity are linked to overweight and obesity. She emphasized that a few extra calories per day associated with a little less activity each day will cause a steady weight gain over time.

Martha Rardin representing the Indiana Dietetic Association testified that there is also a suspected correlation between soft drink consumption and kidney stone formation. (See Exhibit 16.) She added that proposed legislation should not be focused exclusively on vending in the school environment but rather should look at the entire school nutrition environment.

Staff distributed written testimony, regarding schools that have improved school foods and beverages offered and not lost revenue, from Patricia Richards of the American Cancer Society. (See Exhibit 17.) A memo clarifying school vending rules in Kentucky and Louisiana from David Thorp of the American Beverage Association was also distributed. (See Exhibit 18.)

Joe Lackey, Executive Director of the Indiana Soft Drink Association, stated that the industry provides a range of options to the consumer. He added that a vending machine is an unmanned retailer and the consumers make the choices of the products purchased. Mr. Lackey reviewed the American Beverage Association's new national policy regarding the sale of beverages sold through vending machines placed in schools. (See Exhibit 19.) Mr. Lackey stated that this policy is already being implemented by vendors.

Commission discussion followed regarding the Indiana Beverage Association's reasons for opposing certain language in the bill introduced in the last legislative session.

Kim Galeaz, R.D., representing the Indiana Beverage Association, stated that banning or eliminating certain foods or beverages is not a long term solution to reducing childhood obesity or creating healthier lifestyles. Ms. Galeaz commented that the new guidelines of the American Beverage Association need to be supported and implemented in the schools. She suggested that more nutrition education is needed, that children need to be taught the concept of moderation, and that increased physical activity has benefits. (See Exhibit 20.)

Leslie Bonci, MPH, RD, LDN, representing the Indiana Beverage Association, commented that the focus of the discussion on school vending of soft drinks has been limited to the item being purchased instead of looking at the behavior. The product should not be viewed in isolation. The frequency of intake and the quantity consumed also needs to be taken into consideration. (See Exhibit 21.) She also mentioned that drinking carbonated beverages does not necessarily displace calcium consumption in the diet since cheese, milk on cereal, yogurt, and other fortified products are sources of calcium.

The meeting was adjourned at 2:45 P.M.